

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

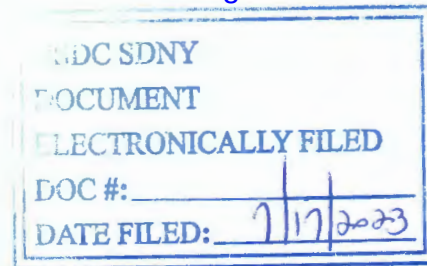
JAMES KEVIN KERGIL,

Petitioner,

-against-

BUREAU OF PRISONS; RESIDENTIAL  
REENTRY CENTER, BRONX, NY; MS.  
COSME (DIRECTOR),

Respondents.



23-CV-5949 (CM) ORDER TO  
ANSWER, 28 U.S.C. § 2241

McMahon, J.:

James Kevin Kergil has filed a motion pursuant to 28 U.S.C. § 2241, asking that he be released from Bureau of Prisons (BOP) custody. Kergil argues in his petition that the BOP failed to follow the rules—as amended by the First Step Act of 2016—for calculating the time an inmate has served. Kergil, who is currently designated to a Residential Reentry Facility in the Bronx, says that he should have been released from BOP custody in March 2003.

The Court hereby ORDERS that:

The Clerk of Court shall electronically notify the Civil Division of the U.S. Attorney's Office for the Southern District of New York that this Order has been issued.

Within ten days of the date of this order, the U.S. Attorney's Office shall file an answer or other pleadings in response to the petition. Petitioner may file reply papers, if any, within five days from the date Petitioner is served with Respondent's answer.

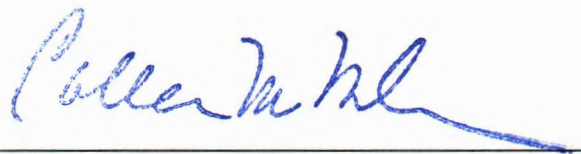
The expedited briefing schedule reflects the Court's concern that Kergil's convictions may be overturned in light of *Ciminelli v. United States*, No. 21-1170, 98 U.S. -- (2023). In *Ciminelli*, the Supreme Court held that valuable economic information needed to make discretionary economic decisions is not a traditional property interest and does not constitute

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“property” for purposes of the federal wire-fraud statute, and therefore the “right-to-control” theory cannot form the basis for a conviction under the federal fraud statutes. The case of Kergil’s codefendant Michael Bindow was recently vacated by the Supreme Court on *Ciminelli* grounds, and is currently on remand before the Second Circuit, where the parties are actively briefing the *Ciminelli* “right to control” issue. The Court expects that any response by the Government to Kergil’s § 2241 motion include a discussion on the continued viability of Kergil’s conviction in light of *Ciminelli*, and how that factors into his present motion.

SO ORDERED.

Dated: July 17, 2023  
New York, New York



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Colleen McMahon  
United States District Judge